

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Antonia Mesa-Sandoval)	
Charging Party)	
)	
v.)	HRC Charge No. PA12-0006
)	
)	
VT Dept of Public Safety)	
Responding Party)	

FINAL DETERMINATION

Pursuant to 9 V.S.A. §4554, the Vermont Human Rights Commission enters the following Order:

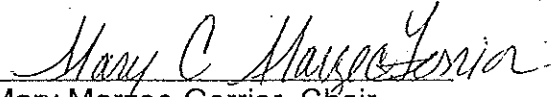
1. The following vote was taken on a motion to find that there are **reasonable grounds** to believe that the Vermont Department of Public Safety, the Respondent, illegally discriminated against Antonio Mesa-Sandoval, the Charging Party, in violation of Vermont's Fair Housing and Public Accommodations Act on the grounds of national origin, race, and color.


Mary Marzec-Gerrior, Chair	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Nathan Besio	For <input type="checkbox"/>	Against <input type="checkbox"/>	Absent <input checked="" type="checkbox"/>	Recused <input type="checkbox"/>
Mary Brodsky	For <input type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input checked="" type="checkbox"/>
Mercedes Mack	For <input type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input checked="" type="checkbox"/>
Donald Vickers	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Charles Kletecka	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>

Entry: ☒ Reasonable Grounds ☐ Motion failed


Dated at Winooski, Vermont, this 1st day of December, 2011.

BY: HUMAN RIGHTS COMMISSION



Mary Marzec-Gerrior, Chair


Nathan Besio


Mary Brodsky


Mercedes Mack


Donald Vickers


Charles Kletecka

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Daniel Alejandro Lopez-Santiago)	
Charging Party)	
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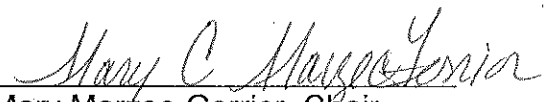
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Mary Marzec-Gerrior, Chair	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
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Donald Vickers	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
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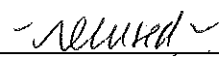
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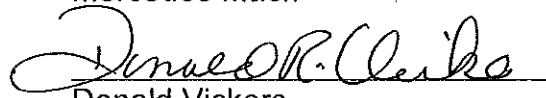
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INVESTIGATIVE REPORT
PA12-0005
& PA12-0006

CHARGING PARTIES: Daniel Alejandro Lopez-Santiago (0005) & Antonio Mesa-Sandoval (0006)

RESPONDING PARTY: The Vermont Department of Public Safety

CHARGE: Public Accommodations/National Origin/Race/Color

SUMMARY OF CHARGE: On September 19, 2011, Mr. Lopez-Santiago and Mr. Mesa-Sandoval filed Charges of Discrimination alleging that the Department of Public Safety, through its agent, Trooper Jared Hatch, discriminated against them because of their national origin, race and color. Complainants were passengers in a truck that was stopped for speeding by Trooper Jared Hatch. Complainants allege that because of their skin color and appearance they quickly became the focus of the stop which resulted in intensive questioning about their legal status and ultimately resulted in their being taken into custody and handed over to Border Patrol.

SUMMARY OF RESPONSE: The state denies that Trooper Hatch's attention was drawn to Mr. Lopez-Santiago and Mr. Mesa-Sandoval by the color of their skin or appearance; however it admits that Trooper Hatch's attention shifted to the complainants and away from the driver.

PRELIMINARY RECOMMENDATION: This investigative report makes a preliminary recommendation that the Human Rights Commission find that there are **reasonable grounds** to believe that the Department of Public Safety discriminated against Mr. Lopez-Santiago and Mr. Mesa-Sandoval based on their national origin, race and color, in violation of 9 V.S.A. §4502(a).

SUMMARY OF INVESTIGATION:

Interviews:

Daniel Alejandro Lopez-Santiago
Antonio Mesa-Sandoval

Documents:

Charge of Discrimination
Responses to the Charges
Open letter from the State Police Advisory Committee (SPAC)
Video of Stop released by the Vermont Department of Public Safety

I. Why public roads are “places of accommodation” under Vermont’s FHFA

The central question in this case is whether the Department of Public Safety (DPS), through its agent, Trooper Jared Hatch, discriminated against Mr. Lopez-Santiago and Mr. Mesa-Sandoval by denying them the rights and privileges that attach to all persons traveling on Vermont’s highways because of their national origin, color and race.

Vermont’s Fair Housing and Public Accommodations Act (FHFA) is not a criminal statute – it is a civil statute. While there may be an inclination to view the facts in this case from the perspective of whether the charging parties violated any state or federal criminal laws, the only issue before this Commission is whether 1) the complaining parties can show a prima facie case of discrimination, and 2) whether or not the DPS violated a Vermont *civil* law. There are next to no cases from other jurisdictions on the application of the public accommodations act to complaints of discrimination that occur between law enforcement and persons traveling Vermont’s roads by car. Nearly all the complaints arising from contact between persons in cars and law enforcement are addressed in criminal court through the Fourth Amendment to the U.S. Constitution which prohibits unlawful searches and seizure; however, a Fourth Amendment analysis does not apply to this case since the issue before the commission arises in the context of a civil statute.

Generally speaking, FHFA is a “remedial” statute, that is, a statute that provides a remedy to a problem¹ and as a remedial statute, courts are required to interpret it “broadly” in order to effectuate its purpose.² The FHFA, 9 V. S. A. §4502(a), states, in pertinent part:

An owner or operator of a place of public accommodation

¹ BLACK’S LAW DICTIONARY (9th ed. 2009).

² Department of Corrections v. Human Rights Commission, 181 Vt. 225, 227-28 (2006); Human Rights Commission v. Benevolent And Protective Order Of Elks Of The United States Of America, 176 Vt. 125, 136-38 (2003); Henrietta D. v. Bloomberg 331 F.3d 261, 279 (2nd Cir. 2003).

or an agent or employee of such owner or operator shall not, because of the race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity of any person, refuse, withhold from, or deny to that person any of the accommodations, advantages, facilities, and privileges of the place of public accommodation.

In Vermont Department of Public Safety v. Vermont Human Rights Commission, Docket No.: 394-6-10 Wncv (2010),³ Judge Geoffrey Crawford addressed the issue of whether roads were place of public accommodation, finding that roads and highways fall within the statutory framework, since they are “places” where services, privileges, advantages and benefits are offered. They are maintained and controlled by agents of state government⁴ who function as their *de facto* “owners.” The Department of Public Safety oversees road safety and the enforcement of an array of roadway and motor vehicle laws that govern licensing and safe driving, and is therefore an owner/operator pursuant to the statute. In this regard, FHPA applies to this case because state troopers act as administrators, stewards and community caretakers of the roads and those who travel on them. Police services are provided to the general public.

The FHPA is Vermont’s anti-discrimination statute. It is the product of principles found throughout Vermont’s Constitution such as Chapter I, Article 7 and Chapter I, Article 11. Chapter I, Article 7, the “Common Benefits Clause,” is more protective of equal rights than its federal counterpart, which can “supplement” the protections of Article 7, but not supplant it [the Article] as first and primary safeguard of rights and liberties of all Vermonters.”⁵ Furthermore, Article 7 defines community broadly, not

³ See Attachment A – copy of Judge Crawford’s decision.

⁴ For instance the Agency of Transportation is responsible the safety and conditions of the roads. The Department of Motor Vehicles and Department of Liquor Control have been given similar jurisdiction over the highways.

⁵ Baker v. State, 170 Vt. 194, 202 (1999).

exclusively, that is "for the common benefit of the community and not for the advantage of persons who are only part of that community."⁶

Chapter I, Article 11 addresses the right to be free from "unreasonable government intrusions into legitimate expectations of privacy,"⁷ and has been held to be more protective in some respects than its federal counterpart – the Fourth Amendment. Chapter I, Article 11 recognizes two kinds of rights – "possessory rights which are implicated in police seizures and privacy rights which are implicated in searches."⁸

In addition, the FHPA also embodies several principles of state and federal constitutional law. It reflects the values inherent in the Fourteenth Amendment's⁹ Equal Protection Clause and the procedural and substantive aspects of the Due Process Clause.¹⁰ It mirrors the protections afforded by many federal statutes such as the Civil Rights Act of 1964,¹¹ the Americans with Disabilities Act (ADA),¹² and the Fair Housing Act.¹³ FHPA's federal corollary is found in 42 U.S.C.A. §2000e of the Civil Rights Act entitled: "Prohibition against discrimination or segregation in places of public accommodation." This provision also prohibits any state action which would support discrimination or segregation, and FHPA was first enacted in 1957 to prevent that occurrence. Vermont affords broader protections than the

⁶ *Id.* at 212.

⁷ *State v. Savva*, 159 Vt. 75, 87 (1991).

⁸ *Id.* at 88.

⁹ The text of the Fourteenth Amendment reads: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

¹⁰ "Due process" of law has been recognized to have both a *procedural* and a *substantive* aspect although they may both be present within a single circumstance. Simply stated, the procedural aspect of due process addresses deprivations of "life," "liberty," and "property" and provides that no deprivation shall occur without fair notice, a hearing and a neutral judge. The concept of substantive due process has been used to analyze issues such as freedom of speech, freedom of association, right to privacy and to protection of "discrete and insular minorities." See *United States v. Carolene Products Co.*, 304 U.S. 144 (1938).

¹¹ 42 U.S.C.A. 21 §§1981-2000h-6.

¹² 42 U.S.C. §§12101-12213.

¹³ 42 U.S.C. §§ 3601-3619.

federal act in that it has a larger number of protected categories;¹⁴ however, both laws protect individuals based on their national origin, color and race as is the issue here.¹⁵

II. Vermont's FHPA protects all persons regardless of citizenship

The FHPA applies to "persons,"¹⁶ the definition of which can be found in the Vermont Constitution. Article One¹⁷ of the Vermont Constitution makes no distinction as to categories or types of "persons" who are entitled to rights and liberties -there are no exclusions of persons from outside of Vermont's borders other than a reference to the prohibition of the importation of slaves.¹⁸ Additionally, Title 1 §128 of the Vermont Statutes, reads: "Person" shall include any natural person, corporation, municipality, the state of Vermont or any department, agency or subdivision of the state, and any partnership, unincorporated association or other legal entity."

The right of non-citizens to due process of the law has been recognized as being embedded in the U.S. Constitution and has been discussed in many cases by both state and federal courts. In Plyler v. Doe,¹⁹ the U.S. Supreme Court addressed the issue of whether "undocumented

¹⁴ In other words, Vermont prohibits discrimination based on race, sex, color, national origin, sexual orientation, gender identity, marital status, disability, and creed. 9 V.S.A. § 4502(a). The federal law covers only race, color, national origin and religion. State laws may offer more protections than federal laws, but they cannot offer less protection than that of the federal law.

¹⁵ 42 U.S.C.A. §2000a(a).

¹⁶ 139 V.S.A. §4502(a).

¹⁷ **Chapter 1, Article 1. [All persons born free; their natural rights; slavery prohibited]**

That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; therefore no person born in this country, or brought from over sea, ought to be holden [sic] by law, to serve any person as a servant, slave or apprentice, after arriving to the age of twenty-one years, unless bound by the person's own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like.

¹⁸ *Id.*

¹⁹ 457 U.S. 202 (1982).

aliens" were "persons" entitled to equal protection of the laws. Finding that they were entitled to equal protection, the Court wrote:

The Fourteenth Amendment provides that "no State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to *any person within its jurisdiction* the equal protection of the laws." (Emphasis added.) Appellants argue at the outset that undocumented aliens, because of their immigration status, are not "persons within the jurisdiction" of the State of Texas, and that they therefore have no right to the equal protection of Texas law. We reject this argument. Whatever his status under the immigration laws, an alien is surely a "person" in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as "persons" guaranteed due process of law by the Fifth and Fourteenth Amendments.²⁰

Most obvious of course, is that the non-citizen plaintiffs in Plyler (and other cases) had the right in the first instance to complain, via a lawsuit, about unfair and unequal treatment that they believed had resulted from inequitably administered state laws or policies. Their cases were not dismissed because they were not in the country legally. In light of the definition of "person" under Vermont's constitutional and statutory law, the public accommodations act would apply to Mr. Lopez-Santiago and Mr. Mesa-Sandoval regardless of their citizenship status. Thus they are entitled to its protection and may file a complaint when they believe they were subjected to treatment which violated it.

III. The elements of a prima facie case –Complainants meet their burden

In order to make a prima facie case under 9 V.S.A. §4502(a), Mr. Lopez-Santiago and Mr. Mesa-Sandoval must show by a preponderance of the evidence that:

²⁰ *Id.* at 210 (citing Shaughnessy v. Mezei, 345 U.S. 206, 212 (1953); Wong Wing v. United States, 163 U.S. 228, 238 (1896); Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886)).

1. They are members of a protected class (national origin, race and color).
2. They were in a position to receive services ordinarily provided by the respondent to all members of the public in the manner in which they are ordinarily provided;
3. They did not enjoy the privileges and benefits of the place of public accommodation in that (a) they were deprived of the services while similarly situated persons outside the protected class were not deprived of those services, and/or (b) they received services in a markedly hostile manner and in a manner which a reasonable person would find objectively unreasonable.²¹

With respect to the first element, Mr. Lopez-Santiago and Mr. Mesa-Sandoval are both Mexican nationals. Both men have black hair and dark skin tone. Mr. Lopez-Santiago speaks and understands only a little English and Mr. Mesa-Sandoval speaks and understands almost no English. In their complaint, they allege that their appearance made Trooper Hatch assume they were undocumented workers. The complainants meet the first element.

With respect to the second element, they were passengers in a car driven by a third party who was giving them a ride to Charlotte. They were traveling Vermont's Interstate 89 and in a position, like all travelers, to receive all the privileges and benefits that apply when one travels by road, be it as driver or passenger. As a result, they were also in a position to receive the services that the Department of Public safety provides, as either community caretakers or investigators or both.²² They meet the second element.

Finally, with respect to the third element, Mr. Lopez-Santiago and Mr. Mesa-Sandoval alleged that their use of Vermont's highways as passengers was cut short by Trooper Hatch's almost immediate focus away from the speeding violation, which justified the stop to begin with, and onto to the matter of their immigration status. This inquiry was based solely upon their appearance – that is, skin and hair color – the state presents no other logical

²¹ Christian v. Wal-Mart Stores, Inc., 252 F.3d 862, 872 (6th Cir. 2001)(citing Callwood v. Dave & Buster's, Inc., 98 F.Supp.2d 694, 706 (D. Md. 2000).

²² These roles are discussed later in the report.

explanation for Trooper Hatch's shift in focus. Once Trooper Hatch began asking them questions, their inability to completely understand or respond to his questions in English – all aspects of their national origin, became apparent.

Mr. Lopez-Santiago and Mr. Mesa-Sandoval experienced Trooper Hatch as aggressive, threatening and rude - both for questioning them to begin with and for the manner in which he questioned them about whether they were "legal" or not. The video reveals the trooper's rapid shift of attention from the driver and a speeding violation, to the two passengers, with continual questions solely having to do with their legal status. A reasonable person could believe they were being treated with hostility under the circumstances. In light of these factors, and since at this stage of the complaint the burden on the complaining party is "relatively light,"²³ the complainants have met their burden and established a prima facie case.

IV. Responding Party's non-discriminatory reason for its treatment of the Complaining Parties fails

Once the complainants establish a prima facie case the burden shifts to the Respondent to produce evidence of one or more non-discriminatory reasons for the treatment of Mr. Lopez-Santiago and Mr. Mesa-Sandoval. The Department of Public safety fails to sustain its burden in this regard as evidenced by the video of the stop. Additionally, the state's written response gives no alternative reason for why Trooper Hatch began to focus upon the two men - it simply denies that Trooper Hatch focused on the their

²³ Gallipo v. City of Rutland, 178 Vt. 244, 250 (2005). While *Galipo* is an employment case, the burden is the same with respect to the prima facie case. As the court notes in *Callwood*, "It is important to recall that the *McDonnell Douglas* proof scheme is intended to provide flexibility so that it is adaptable to the needs of the myriad of cases in which it is to be applied." *Callwood* at 704. See also Carpenter v. Central VT Medical Center 170 Vt. 565, 566 (1999).

skin color and states that the trooper asked them initial questions, but gives no reason why he began questioning them in the first instance.²⁴

The video begins with the stop for speeding.²⁵ Trooper Hatch then approaches the passenger side of the truck and knocks on the window. His first question is to the driver, who is white: "Where you headed to?" The answer from the truck sounds like "Charlotte" and then the trooper sounds like he is saying, "What is up that way?" There are some more inaudible comments and Trooper Hatch says: "[Do] you know why I stopped you?" He then asks the driver where he lives - Barre or Randolph. His next question is to the passengers: "You folks related?"²⁶ From this point on, speeding becomes a non-issue in the conversation and Trooper Hatch focuses his complete attention on the two Mexican men. It is reasonable to assume he begins to focus on them and to ask if they are related because of their appearance - the fact they both have darker skin and black hair as contrasted with the driver who is white. It takes approximately twenty-seven (27) seconds for Trooper Hatch to switch his attention from the driver's speeding violation to the passengers and their legal status. He returns to the driver from this point on only to ask him questions about Mr. Lopez-Santiago and Mr. Mesa-Sandoval's legal status.²⁷

When Trooper Hatch asks if the two men were related, one presumably answered "Yes" because Trooper Hatch responded by saying "You are?" and then asks: "You guys have ID on you?" He asks them twice

²⁴ The Human Rights Commission requested a copy of the State Police Advisory Committee (SPAC) report to be included in the state's response, however the State would not release it without a confidentiality agreement not to disclose its contents to the complainants who have a statutory right to review the commission's investigative file. Therefore, those findings are not part of this investigative report.

²⁵ This does not pretend to be a professional transcript of the recording made by the cruiser mounted camera and microphone, but all words included in this report could be heard by the investigator. Most of the responses from the truck were inaudible, but where they were audible, it is so noted.

²⁶ Mr. Mesa-Sandoval was seated in the middle and Mr. Lopez-Santiago seated next to the door. The driver is white and is not similar in appearance to the other two men.

²⁷ The driver apparently escaped the whole encounter without a ticket.

more, and inaudible words are heard from inside the truck, although it sounds like one of the men answers that they don't have identification. Trooper Hatch then says, "Where are you from?" The response is again inaudible, and Trooper Hatch says "Where?" The response is again inaudible. Trooper Hatch's next clear words appear to be addressed to the driver: "We can go one of a couple of ways: ok you can be straight with me and be forthcoming about what's going on – do they work for you?" The driver's response is inaudible. Trooper Hatch says "Why are they in your car?" This question comes approximately fifty-eight (58) seconds after he asks whether Mr. Lopez-Santiago and Mr. Mesa-Sandoval are related.

The driver's response is not completely audible although it sounds like he says, "They have a right to be." Trooper Hatch then addresses himself to Mr. Lopez-Santiago, presumably because he is sitting right on the passenger door and says, "What country are you from?" Mr. Lopez-Santiago says "Mexico" and Trooper Hatch says "Mexico, ok." Trooper Hatch then asks, "Where's your 'A' card?"²⁸ Inaudible response- then Trooper Hatch says, "You are required to carry that, right?" There is another inaudible response. Trooper Hatch: "You supposed to carry that with you?" There is an inaudible response from the truck and inaudible comment from Trooper Hatch. The next audible words from Trooper Hatch are, "...give you one chance – one chance to be honest with me – you're, you're legal to be in the United States right now?" The reply from the truck is "No" – Trooper Hatch says, "No, no you're not – I appreciate your honesty." This admission by Mr. Lopez-Santiago occurs approximately one minute and thirty-two (1:32) seconds after Trooper Hatch asked the men if they were related.

Trooper Hatch then says: "This can go a different way, Ok? Obviously if I gotta jump through all the hoops it's gonna be a pain in [everyone's]

²⁸ The trooper may have been referring to an H-2A visa is a nonimmigrant visa designed for foreign individuals coming to the U.S. to perform temporary agricultural work that is seasonal or intermittent in nature and where U.S. workers are unavailable.

butt. What country are you from? Mexico? How did you – come to the United States - how did you come? Airplane-boat-walk?” Mr. Lopez-Santiago responded that he walked. Trooper Hatch then says “Walked? Whereabouts where did you enter the United States?” Mr. Lopez-Santiago responded “Arizona” at which point Trooper Hatch asks what city in Arizona, where Mr. Lopez-Santiago is from in Mexico, what his name and date of birth is, if he has ever been stopped by Border Patrol before or deported and whether it is the first time in the United States.

Trooper Hatch then turns his attention to Mr. Mesa-Sandoval and asks him for identification and asks if he speaks English. He asks Mr. Lopez-Santiago again if he and Mr. Mesa-Sandoval are related and says, “Who is he to you? Who is that to you?” Mr. Lopez-Santiago says “My family.” Trooper Hatch then asks, “Family? Family how? Brother? Cousin?” Mr. Lopez-Santiago says, “Cousin.” Trooper Hatch asks if Mr. Mesa-Sandoval came with Mr. Lopez-Santiago, and the response is inaudible. He then asks for Mr. Mesa-Sandoval’s name and then clearly tells them they “aren’t going anywhere” and to “sit tight” and then walks to his car to call Border Patrol.

The Respondent has offered no reason to support Trooper Hatch’s actions. From the video it is clear that to Trooper Hatch, Mr. Lopez-Santiago and Mr. Mesa-Sandoval looked like “illegal aliens” and his questions reflected this presumption. Trooper Hatch’s question to the driver - why the two men were in the car with him - is the question that goes to the heart of the matter addressed by the public accommodation law. As “persons” protected under the Vermont statute, they had a right to the privileges and benefits of an “accommodation” (to travel as passengers on the public highway without discriminatory application of police power) and the “owner” (DPS) interfered with that right by questioning them, detaining them, and turning them over to Border Patrol because of their color, race and national origin.

With respect to their use of the public highway, the two complainants committed no crime or traffic infraction.²⁹ They were not in control of the car, were not driving the car without a valid license, but were only passengers moving from point 'A' to point 'B' with invitation and permission of the operator. There was no "all points bulletin" for a truck matching the driver's truck, traveling with a white male driver and two suspected undocumented workers. Had there been such a bulletin, Trooper Hatch's actions would not have violated the public accommodations law, because he would be questioning the two men based upon a description provided to him as well as a specific reason for doing so.

As noted in Part I above, the FHPA is not a criminal statute; however, several courts have prohibited assumptions about nationality – and therefore presumptions of illegality – in making stops and seizures in vehicles. In United State v. Brigoni-Ponce,³⁰ the U.S. Supreme Court held that the Border Patrol had unconstitutionally stopped a car with three men based solely on the belief the men were in the country illegally because they looked "Mexican":

In this case the officers relied on a single factor to justify stopping respondent's car: the apparent Mexican ancestry of the occupants. We cannot conclude that this furnished reasonable grounds to believe that the three occupants were aliens....Even if [the officers] saw enough to think that the occupants were of Mexican descent, **this factor alone would justify neither a reasonable belief that they were aliens,....** Large numbers of native-born and naturalized citizens have the physical characteristics identified with Mexican ancestry....The likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor, but **standing alone** it does not justify stopping all Mexican-Americans to ask if they are aliens.³¹ (Emphases added).

²⁹ Mere presence in the United States without proper legal status is a civil violation, not a crime.

³⁰ 422 U.S. 873, 886-7 (1975).

³¹ *Id.* at 886-7.

In United States v. Melendez-Gonzalez,³² the Fifth Circuit reiterated the rule that appearance alone is not the only factor law enforcement can use in making a determination about whether the law has been broken. Similarly in Murillo v. Musegades,³³ the U.S. District Court in the western district of Texas held that the INS had to have more of a basis than "mere ethnic appearance" in order to search or seize an individual: "As a salient guideline, a search or seizure will *never* be considered reasonable if the officer stops the vehicle *solely because of the Mexican ancestry of the occupant*."³⁴

It is beyond the scope of this report to comment or opine about possible constitutional violations and this investigation does not do so. The findings of this report go solely to whether or not the FHPA was violated, and in this instance, this reports finds there is sufficient evidence to find reasonable grounds to believe that the DPS violated the FHPA.

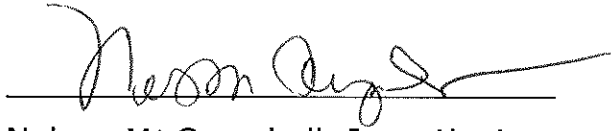
PRELIMINARY RECOMMENDATION:

This investigative report makes a preliminary recommendation that the Human Rights Commission find that there are reasonable grounds to believe that the Vermont Department of Safety illegally discriminated against Daniel Alejandro Lopez-Santiago and Antonio Mesa-Sandoval because of their national origin, race and color in violation of 9 V.S.A. §4502(a).

³² 727 F.2d 407, 410-11 (5th Cir.1984).

³³ 809 F.Supp. 487, 499 (1992).

³⁴ *Id.* (citations omitted) (emphasis in the original).



Nelson M. Campbell, Investigator



Robert Appel, Executive Director

11/8/11

Date